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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,834	12/21/2001	Brian G. Morin	5389	4942

7590

01/10/2005

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,834

Applicant(s)

MORIN ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. The amendment filed November 29, 2004, has been entered. Claims 4, 7, and 10 have been amended as requested. Claims 1-3, 13, and 14 have been cancelled. Thus, the pending claims are 4-12.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 4-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention. Independent claim 4 has been amended to recite a tensile strength of at least “about” 3 g/den. However, the amendment to include “about” broadens the scope of the claim and said scope is not supported by the originally filed disclosure. Hence, claims 4-6 are rejected as containing new matter.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 4 and 7 have been amended to recite carpets “having reduced shrinkage,” while independent claim 10 has been amended to recite a backing layer “having improved shrinkage characteristics.” These new limitations are indefinite because it is unclear what the reduced or improved shrinkage is in comparison to. Therefore, claims 4-12 are rejected as indefinite.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 4, 5, 7, 8, 10, and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of JP 2001-081628 issued to Inoue, as set forth in section 4 of the last Office Action.

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9. Claims 6, 9, and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of JP 2001-081628 issued to Inoue and in further view of US 5,798,167 issued to Connor et al., as set forth in section 5 of the last Office Action.

Response to Arguments

10. Applicant's arguments filed with the amendment of November 29, 2004, have been fully considered but they are not persuasive.

11. It is first noted that argues the prior art references individually. In response, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

12. Applicant traverses the rejection based upon Fujishita in view of Inoue by asserting that the present amendment limiting the backing of the carpet to "consisting essentially of" polypropylene tape fibers excludes the teaching of Inoue, which requires a blend of polypropylene and polyethylene for the tape fibers of the woven backing (Amendment, page 6). This argument is unpersuasive because Inoue, as a secondary reference, is not relied upon for its teaching of the composition of the woven backing, but rather only for its teaching of the amount of nucleating agent to employ in the polyolefin tape yarn. Fujishita, as the primary reference, clearly teaches polypropylene tape yarns having improved heat shrinkage.

13. With respect to applicant's arguments about the "inherency" of the claimed shrinkage values (Amendment, page 7-8), it is argued that a proper basis has been provided by the examiner. Specifically, when the nucleating agent-containing polypropylene primary backing

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according to Fujishita is modified by the amount of said nucleating agent according to the teachings of Inoue, the prior art tufted carpet comprising said primary backing is structurally and chemically equivalent to the presently claimed carpet. As such, it necessarily follows that the prior art have the same physical properties, such as shrinkage properties since like materials cannot have mutually exclusive properties.

14. Applicant also argues that Fujishita teaches away from using nucleating agents (Amendment, page 8-10). Specifically, applicant asserts Fujishita does not employ nucleating agents in his working examples. In response, applicant is reminded that the teachings of a reference are not limited to the working examples or preferred embodiments, but rather are valued for all that the reference discloses. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)).

15. With respect to applicant's assertion that Fujishita's best shrinkage values are significantly lower than those claimed in the present invention (Amendment, page 9), applicant is first reminded that a direct comparison between Fujishita's and applicant's shrinkage values cannot be properly made since said shrinkage values are measured at different times (i.e., Fujishita measures at 15 min, while applicant measures at 5 min). secondly, applicant is reminded that the rejection is a 103 obviousness rejection in combination with the Inoue reference, rather based upon Fujishita alone.

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16. Therefore, applicant's arguments are found unpersuasive and the above prior art rejections are maintained.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
January 6, 2005